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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,085	01/31/2001	Paul Frazier		6057

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EXAMINER

BAYAT, BRADLEY B

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/773,085

Applicant(s)

FRAZIER, PAUL

Examiner

Bradley Bayat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/29/02.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1-22 are presented for examination on the merits.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 1 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claim 1 only recites an abstract idea. The recited steps of merely obtaining data and performing an analysis do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of collecting a number of data items by participants to analyze in a campaign. The nominal or mere use of terminology such as

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automatically or Internet does not necessarily place the claimed invention in the technological arts. As per applicant's recitation of the claim, the only apparent technology is used as a communication channel to send/receive data.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 9 -11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 9 recites the limitation "the single data base" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the channel" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the single data bank" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Mannings, U.S. Patent 6,324,266 B1.**

As per the following claims, Mannings discloses:

1. A method of compiling data comprising: inviting telephone responses to a data-gathering campaign; inviting Internet responses to a data-gathering campaign; automatically routing the telephone responses and the Internet responses to a single data bank which is common to both a telephone response path and an Internet response path; preventing duplicate telephone responses from reaching the single data bank; preventing duplicate Internet responses from reaching the single data bank; and using data captured in the single data bank to analyze a campaign (column 1, line 58-column 2, line 29; column 5, lines 1-13 and 29-46; column 6, lines 38-43; figures 1-3 and associated text).
2. The method defined in claim 1 further including a step of further processing non-duplicate responses (column 6, lines 15-56).
3. The method defined in claim 2 wherein the step of further analyzing responses includes a step of selecting a response for special attention (figure 3 and associated text).
4. The method defined in claim 2 further including a step of merging telephone responses and

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Internet responses received in the data bank into a single merged data report (figure 1 and associated text).

5. The method defined in claim 3 wherein the step of further analyzing responses includes a step of identifying a respondent associated with the selected response (column 6, lines 15-43).

6. The method defined in claim 5 wherein the step of further analyzing responses includes a step of notifying the identified respondent (column 6, lines 63-67).

7. The method defined in claim 6 wherein the step of further analyzing responses includes a step of notifying a non-selected respondent that their response has not been selected for special attention (column 7, lines 5-10).

8. The method defined in claim 7 wherein the telephone response is via a toll-free number (column 1, lines 40-58; column 3, lines 20-25; column 6, lines 22-23).

9. The method defined in claim 1 wherein the step of using the single database to analyze a campaign includes steps of analyzing respondent profiles and information including name and address (figure 3 and associated text; column 4, lines 15-19).

10. The method defined in claim 6 wherein the step of further analyzing responses includes a step of notifying the respondent via the channel used by the respondent to accept the invitation

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(column 6, lines 44-56).

11. The method defined in claim 9 wherein the step of using the single data bank includes capturing cookie information (column 5, lines 47-56).

12. The method defined in claim 1 further including a step of identifying the number of Internet responses (column 5, lines 57-64; figure 3 and associated text).

13. The method defined in claim 1 wherein the step of preventing duplicate responses includes notifying a respondent associated with a duplicate entry of the prevention step being taken (column 6, line 54-column 7, line 10).

14. The method defined in claim 1 wherein the step of further analyzing responses includes a step of capturing HTML and sending HTML to a browser (column 5, lines 29-46; column 7, lines 11-31).

15. The method defined in claim 13 further including a step of notifying a respondent associated with a duplicate response when a response from that respondent will be accepted (column 6, lines 63-67).

16. The method defined in claim 2 wherein the step of further analyzing responses includes a step of obtaining ANI for each response received via a telephone channel (column 6, lines 15-

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43).

17. The method defined in claim 7 wherein the step of further analyzing responses includes a step of notifying a non-selected respondent when another response will be accepted from that non-selected respondent (column 7, line 49-column 8, line 18).

18. The method defined in claim 1 wherein the step of routing telephone responses includes interactive voice response steps (column 3, lines 20-32).

19. The method defined in claim 1 wherein the step of routing telephone responses includes automatic number identification steps (column 3, lines 44-56).

20. The method defined in claim 17 wherein the step of routing Internet responses includes automatic number identification steps (column 5, lines 14-67).

21. The method defined in claim 1 further including a step of entering a UPC associated with a response into the database (column 4, lines 24-26).

21. The method defined in claim 1 further including entering a UPC associated with a response into a single database (column 4, lines 20-37).

22. The method defined in claim 21 further including a step of checking the validity of each UPC



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entered into the single data bank as it is entered and notifying a respondent if the UPC is not valid (column 1, line 59-column 2, line 65; column 4, lines 24-26).

*Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.*

#### **Conclusion**

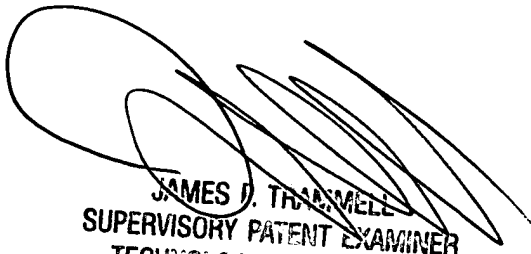
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley Bayat whose telephone number is 703-305-8548. The examiner can normally be reached on Tuesday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 703-305-9768. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

bbb



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